



Know Your Rights during COVID-19 (Coronavirus)

Last updated April 7th, 2020

While the COVID-19 pandemic necessitates public health measures to reduce the impact of the virus on our communities and health care systems, we must be vigilant and resist authoritarian and violent tendencies.

Historically, states of emergency, mandatory quarantines, and curfews have often been used to expand state control over political and civil freedom. Emergency powers often criminalize movement, freedom of expression, protest, and oppressed communities including: Black, Indigenous, and other People of Color, queer and trans people, low- and no-income people, migrants, incarcerated and institutionalized people, disabled people, people in the sex trades, and many other communities.

We believe that we can build safer communities and respond to COVID-19 without expanding the police or medical surveillance. We believe we can ensure community and societal safety in this health emergency without stripping our already limited rights and freedoms or exacerbating societal inequities. We know that we are scared. We know that we are vulnerable. And we also must defend ourselves, our communities, and future generations from intrusion by the state. Now is the time to work to create desirable permanent changes to what has been the status quo. We believe that crafting this guide is a step toward this vision.

Please note that the law is rapidly evolving when it comes to public health directives, “stay at home” and “shelter in place” and mandated “social distancing.” Our intention is to update this document every week beginning April 7, 2020 , but there will probably be some things that are wrong or out of date. We welcome your help in keeping this document accurate and up to date!

[Here](#) is an ongoing list of stay of home order violation enforcement measures thus far.

If you have corrections, additions, or recommendations for making this document more easily readable please email: COVID19KYR@gmail.com

If you would like to add city-specific information to this document including city-specific updates, law enforcement misconduct, or changes [please click here to access the public shared document.](#)

This document is focused on criminalization, militarization, and other forms of state power. It is not focused on the (also vital) topics of economic rights in this time.

Please note this guide is intended as a resource for community members and does not constitute legal advice.

This guide includes:

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State of Emergency

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What is a state of emergency?

A state of emergency boosts the government's power and allows the government to carry out activities and implement policies that it would normally not be allowed to do.

Presidential Emergency Powers

What is a national state of emergency?

Presidents can declare a state of emergency in response to economic, national security, natural disaster, or health crises. Depending on the nature of the emergency and any limits set by Congress, a state of emergency may give the President broader powers than usual to address the emergency. We do not automatically lose our rights in a state of emergency. Still, there are very real risks of overreach. Emergency powers can range from using emergency spending powers or making it easier for people to get Medicaid coverage, to testing biological weapons on human subjects or locking people up indefinitely without court involvement.

A public health emergency can also be declared by the Secretary of the Department of Health and Human Services. When the Secretary of the Department of Health and Human Services declares a public health emergency, it gives them the power to make grants, authorize the use of a treatment that the FDA has not approved, and investigate the cause, treatment, or prevention of the illness causing the emergency. If both the Secretary and the President declare a state of emergency, it gives them the power to override certain laws. For example, they can say that doctors don't have to keep patient information confidential. They can also say that emergency rooms can transfer patients even if they are not in stable condition.

States of emergency are not new: everyone who has lived in the U.S. since 1976, when Congress enacted the National Emergencies Act, has experienced at least one state of emergency at any given time (the Brennan Center has compiled [a list](#)). Presidents have declared states of emergency related to terrorism, weapons of mass destruction, international drug trade, and developments in other countries. They have used their emergency powers to do a variety of things, often restricting trade with other countries. The U.S. Congress can choose to give or take away the president's emergency powers. Additionally, a President's exercise of emergency powers can be challenged in court, all the way up to the Supreme Court if necessary. If the court sees the use of emergency powers as unrelated to the emergency or unauthorized by a statute, it should say the president can't use them.

When does a federal state of emergency end?

A state of emergency ends whenever Congress passes a joint resolution ending it, or the president declares it is over. It will also end automatically in a year, unless the president declares the emergency is still happening. In practice, emergencies tend to last many years, because presidents say that the emergency is continuing, and Congress does not interfere.

State-Level Emergency Powers

When can a governor declare a state of emergency at the state level?

Although each state differs, a governor may declare an emergency by issuing an executive order or other declaration to that effect. The declaration addresses the effective dates and duration of the emergency, geographic areas of the state covered, conditions giving rise to the emergency, and the agency or agencies leading the response activities. The declaration may also identify state rules and regulations that are waived or suspended during the emergency.

What rights are lost or changed in a state of emergency at the state level?

Each state has different powers in a state of emergency, but they generally include the ability to impose curfews, order people and traffic off the street (generally enforced through policing), mandate quarantines, ration goods, declare price controls, suspend alcohol consumption, and limit public gatherings.

What is the role of the national guard in a state of emergency?

Can the national guard arrest or attack people inside the U.S. in times of emergency?

Yes, it is possible. As of April 2nd, at least 17,250 National Guard members are aiding in the coronavirus response in all 50 states, as well as in Washington, D.C. and Puerto Rico. The state and federal government generally claim that the role of the national guard is to provide food and medical supplies, as well as shut down places of public gathering. However, governors have wide leeway to use their state or territory's guard members as they see fit, and they could be used to assist with policing, enforcing quarantines, or enforcing other emergency mandates, as they were in New Orleans following Hurricane Katrina.

Can I get arrested for not staying at home or following other special rules?

What's the difference between a shelter-in-place or stay-at-home order, a curfew, and other restrictions on movement?

A **shelter-in-place** (currently in place in California) or **stay-at-home** (currently in place in Illinois and other states) order requires everyone who has a home to stay inside it, with limited exceptions (going to the grocery, pharmacy, to seek medical care, to exercise or walk pets, etc.). Even when there is no formal order, some government officials have announced **restrictions on movement**. For example, in New York, Governor Cuomo has banned public gatherings of any size, unless they are of workers providing essential services.

A **curfew** forbids people from going or staying outside during certain hours, sometimes with certain exceptions (e.g. essential service workers, people seeking medical treatment). Curfews have been much more common historically, especially when the government has responded to unrest, riots, and uprisings.

Right now we are seeing more stay-at-home orders than curfews. This does make more sense as a public health measure, because curfews could actually create more crowding in public places as people try to pack all their outdoor activities into a few hours.

If my state or city has told everyone to shelter in place, can I get arrested for not doing that? If I violate a curfew?

Maybe. Some states and cities have laws that make it a crime not to obey orders from public health officials in some circumstances. Some have laws that make it a crime not to obey an order from a governor or mayor in a state of emergency. Some states and cities already have laws that could be used to criminalize people for doing these things, and some may pass new laws that make these things crimes. Every state has a law that makes it a crime to disobey a lawful police order (such as an order to disperse), to engage in “disorderly conduct” that causes “public alarm,” or to interfere with an official engaged in legitimate duties. In reality, it is likely that the usual forms of profiling on the basis of race, class, disability, gender, poverty, language, and [im]migration status will make a huge difference in who gets arrested. At present, anti-Asian racism might influence police more than usual.

There are some limits to imposing these types of rules on people, though. During uprisings in the 1960s, some cities declared states of emergencies and imposed curfews, as allowed by state law. Some courts found that it was valid to arrest and convict people for violating these curfews, and others didn't. Total bans on going outside during certain hours were less likely to be seen as valid, compared to bans on lingering outside or bans with exceptions for people going outside for certain important reasons. Courts would also consider the nature of the emergency, and whether there were other ways to achieve the same goal without restricting people's liberty.

If these new orders are challenged in court, courts will probably look at shelter-in-place orders in the same basic ways. They will consider whether the government body that issued the order had the power to do it. If it did, courts will probably say that these orders are okay if they are based on recommendations of public health officials during a public health crisis, especially if they create exceptions for people who need to leave their homes for important reasons and for people who have no homes. Absolute bans on anyone going outside at all for any purpose, or bans that continue beyond the public health crisis, are less likely to be considered valid.

Can I get arrested for not sheltering in place in San Francisco right now?

San Francisco has claimed that it has the power, under state law, to arrest and punish people who violate the shelter-in-place order. But it's not at all clear that's true.

It is true that the law makes breaking quarantine or strict isolation a misdemeanor. But the shelter in place order does not seem to be a quarantine or strict isolation order. (See Quarantine below.)

It is also true that public health officials and police can restrict people's movement in an attempt to prevent transmission of COVID-19 under local law. And it is a misdemeanor to resist, delay, or obstruct a police officer or EMT carrying out their duties. But obstruction requires some direct interaction with the officer or EMT—something more than just leaving one's home.

Still, the reality is that some people may be arrested. And it's impossible to say for sure what would happen in court. To improve your chances in court if you do get arrested, think about what might help you prove you are not violating the order. For example, it is okay to leave your home to go hiking, to get groceries, or to pick up prescriptions. So if you make a shopping list on an app before leaving your home, or text someone before you leave that you are going hiking and walk directly toward a hiking trail, you might be able to use that to help you. If you are a worker at a business deemed essential, carry your work ID, a pay stub, wear your uniform, or bring some other proof of employment if you can.

Can I get arrested for walking within 6 feet of someone in New York right now?

There is no specific law against walking within 6 feet of someone, although “public gatherings” have been banned. Public gatherings are any concentrations of people outside the home other than workers providing essential services. The NYPD has arrested people for being outside and near each other, charging them with “obstructing governmental administration, unlawful assembly, and disorderly conduct.” They have done this even though arresting people causes far more public health risks--puts far more lives in danger--than leaving them be.

Police could also use other laws to arrest people who don't comply. For example, it is a misdemeanor called “criminal nuisance” if someone, “by conduct unreasonable under all the circumstances, knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons.” It is also a misdemeanor not to obey an order from a local public health department, although it doesn't look like the NYC Department of Health and Mental Hygiene has issued an official order about social distancing.

NYC has announced that it will enforce COVID-19 related restrictions with fines, rather than arrests. Those fines will have a very different impact on people depending on their access to wealth. The typical dynamics of race, class, disability, gender, national origin, and poverty-based bias may influence police actions even more than usual given the level of stress and uncertainty. Police have a great deal of discretion to let people go with a warning, give them a ticket, or arrest them.

What about these terrorism charges I am hearing about?

The DOJ has claimed it has the power to charge people who deliberately expose others to COVID-19 with terrorism, and some local prosecutors have charged people with terrorism or “terroristic threats” for actions like deliberately coughing in someone's direction while claiming to have COVID-19 or licking products in a store. These tactics are disturbingly similar to ones used against [people living with HIV](#).

Quarantine

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I'm not sure whether I'm under quarantine. How can I tell?

Quarantine or isolation means that you are *not allowed* to leave a certain place for a period of time (often determined by the time elapsed from potential exposure) in order to prevent other people from getting an illness. Public health officials generally have the power to order someone to be quarantined, and police have the power to enforce a quarantine. (Public health officials generally use the word quarantine if they are separating you from others because you *may have been exposed to the illness*, and isolation if they are separating you from others because *you have the illness*, but we'll just call them both quarantine here.) Quarantine is generally imposed if you have tested positive for an infectious disease or you have been exposed to someone who has. If it's just a recommendation, it isn't quarantine. If it's something you're imposing on yourself, it isn't quarantine. The CDC has three days from the time they take a person into custody to serve them with an order for quarantine, isolation or conditional release.

Quarantine can look a lot of different ways. For example:

- You could get an order or a letter from a doctor or public health official telling you that you have tested positive or been exposed to COVID-19 and ordering you to quarantine for a period of time, and warning that you will face sanctions if you leave your home;
- You might be told by a doctor, health care provider, or medical administrator that you are not allowed to leave a hospital room or isolation ward;
- A police officer could be stationed at the door of your home or hospital room to make sure you don't leave;
- A court could order you to be detained.

If you test positive for COVID-19 or have been exposed to someone who is exhibiting symptoms, you may be placed in quarantine by a doctor, public health official, or court. If a doctor tells you to stay isolated in your home, you might want to ask follow-up questions to clarify as much as you can whether that's just a recommendation, or something more official. Here are some examples of questions you could ask:

- "I understand it's important for me to stay away from others right now as much as I possibly can, and I definitely want to do that. But just so I know, is this an official isolation or quarantine? If I need to leave my home for some reason, could I get in trouble? What about if I open the door after someone knocks on it?"
- "What about if a friend or family member wanted to come over to help care for me while I'm sick? If they came in, would they then have to follow the same restrictions?"
- "What does isolation/quarantine mean? Are there any exceptions? Could you send me something in writing saying what I am and am not allowed to do?"

You can also sometimes check your state or territory's public health department's website to see if there are any standing quarantine or isolation orders. Thousands of people in the U.S. are currently quarantined because of COVID-19. In the past, and possibly in the present, gender, race, class, nationality, disability, poverty, immigration status, and sexuality have played a major role in who has been quarantined for what.

Are there risks to saying I am under quarantine?

Yes. A lot of people are casually referring to themselves as quarantined or isolated on social media, when what they really mean is that they have to telecommute, bars and restaurants are closed, a shelter-in-place order is in effect, or they have a cough so decided they wanted to stay inside just in case. But someone may think you mean that you are actually quarantined, and call the police if they see you in a public place. In Illinois, reportedly someone stopped in a gas station convenience store to let their young child use the restroom, and one of their facebook friends recognized them and remembered they had said they were in isolation. They called the police, and the police arrested the person for being in the convenience store.

Also, there may be political consequences to using quarantine in this loose, metaphorical way. People may start thinking that quarantine isn't so bad, and should be used more widely.

I am under quarantine, but I don't think I should be. How can I get out?

The law on quarantine isn't totally clear, and varies somewhat from state to state. If possible, get a disability rights lawyer. There should be some way to object to the quarantine, and say it isn't necessary. In general, you should be able to get out of quarantine if you can show that your quarantine isn't necessary for public health, or because there are other less restrictive ways to protect public health. The other way to get out of quarantine is just to wait and work with doctors until they agree you can leave.

If you violate quarantine, the government is generally allowed to do more to force you to stay put. In some states, you can also face criminal charges if you violate quarantine. To learn more about your state's law, check out [this chart](#).

I am under quarantine. Does the government have to get me food, healthcare, and hygiene supplies?

Yes, unless you can meet those needs yourself. Any time the government takes away a person's freedom, the government has an obligation to meet the person's basic needs (if they can't meet those needs themselves). If you have a child who usually relies on meals from their public school, many public school districts have been mandated to offer pick-up or delivery meals. That said, the government doesn't have to provide especially *good* food, healthcare, or hygiene supplies—just the basics. You are also entitled to remain in communication with loved ones,

though the frequency of communication allowed can vary. And if government authorities aren't meeting their obligation, it can take a fair amount of time and effort to force them to do it.

I just got out of quarantine and I got a huge bill for being held against my will! Is that legit?

Maybe. It depends on where you are, how you were quarantined, what you are being billed for, and how the law changes in the coming days, weeks, and months. Some states have been charging people in prison for the costs of their own incarceration, although many have challenged that practice. Also, typically in the U.S. we are responsible for our own healthcare costs unless we are insured. But some emergency measures may mean you can get insurance, even retroactively, that will cover most of your costs if you are being charged for healthcare related to COVID-19. At the very least, it can be worth making some noise in traditional and social media. The government may be shamed into covering your bill.

Can the president legally quarantine an entire state?

Probably not. Trump did threaten to quarantine New York and parts of Connecticut and New Jersey. And the CDC does have some power to impose quarantines. But the CDC can only quarantine people "reasonably believed to be infected" with a communicable disease. A blanket quarantine of an entire state does not seem like it could qualify. It would certainly cause major disruptions and hardship, especially since areas like NYC depend so much on imported food and medicine. If Trump tried to quarantine a major geographic area, people would probably challenge it in court quickly.

Can governors quarantine people arriving from New York City?

Generally, governors and mayors have broader powers in this area than the president. Governors of several other states, like Rhode Island and Delaware, have ordered New Yorkers who enter the state quarantined. Generally states aren't supposed to restrict travel into their states from others, but governors do have broad quarantine powers, and given the scale of the crisis, it is probably legal for them to do this. Even if individual New Yorkers challenged their quarantine, their cases probably wouldn't be heard until the typical 14-day quarantine was over.

Incarceration

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What should I do if someone I know gets arrested?

Normally, one really important thing to do when a loved one gets arrested is to show up in court for them. Right now, that may not be safe, or even possible. But there are still ways to be there for your loved one, even if you can't be there in person. In most places courts are just figuring out how to have court hearings on video and there is not a way for others to call in. However, this is all new and folks should definitely put pressure on public officials to make sure there is a way to support either by phone or video.

- Call the local public defender's office (google your city or county with "public defender" for the information), call the numbers you find, and ask who represents your loved one. Introduce yourself, and offer to help however you can. If you know that your loved one falls into a group especially vulnerable to COVID-19 (like if they have diabetes, asthma, COPD, HIV, heart disease, high blood pressure, or cancer), tell the defender that. They might be able to use that information to get the person released more quickly.
- Write a letter explaining your connection to the person, and how they are connected to the community. Explain what support you could offer them if they were released, and why they would turn up to court. Send one copy to your loved one, and one to their defender. They can show the letter to the prosecutor and the judge if it will help them get released.
- Stay in touch as best as you can. If you can, accept collect calls. If visits aren't allowed, look into phone calls, video calls, emails, and letters. But keep in mind, everything will be listened in on, read, and recorded. Don't talk about what the person was arrested for, and don't mention anything that could get them in trouble.
- If bail is set for your loved one and you can't pay it, contact a [bail fund](#) to see if they can help.
- Organize. Talk to others, and think about whether you can drum up public pressure to get your loved one released.

What should I do if I am worried about my loved one being in prison while Coronavirus is spreading?

Many of us are afraid for our loved ones behind bars, and for good reason. Right now, the most important thing is to get as many people out as possible. The second most important thing is making sure that everyone in prison has access to the best possible healthcare, sanitation and hygiene supplies, and nutrition and fluids.

If your loved one gets sick, document everything, and ask them for the contact info of a friend inside. Have that friend update you on their symptoms and what's happening, in case they aren't

able to. Call the warden or superintendent to insist that they get treatment. Reach out to others to support you and help you organize. [This guide](#) shares more ideas.

You can also take other actions to support your own loved one and others behind bars. For example, you can join any of the many phone [zaps](#), [petitions](#), and [other efforts](#) to get people released, and to get those who remain behind bars access to adequate healthcare, sanitation, and nutrition. You can also donate to funds that pay [bail or bond](#), or [supply incarcerated people with basic needs like soap](#). Whether you can donate or not, you can also connect those funds with your loved one and others who may need help.

Are prisons allowed to cancel all visitation? If there's no visitation, how can I stay in touch with my loved one?

Normally, no. Prisons can not just cancel all visitation. You have a right to some contact with your loved ones behind bars, and they have a right to some contact with the outside world. That said, prisons always have a lot of power to “keep order” on the inside, including limiting visits. Given the circumstances, it seems likely that courts will say that cutting off visitation is allowed. But it should only be allowed if prisons allow contact in other ways, and if visitation is allowed again as soon as the health crisis is over. Beginning March 31st, free calls will be available to all CDCR [California Dept. of CCorrections] institutions from 12:01am to 11:59pm Tuesdays, Wednesdays, and Thursdays through the end of April 2020. Many people in other states are demanding expanded and free phone and video calls and emails with incarcerated people since visits have been cancelled. [You can send a letter supporting these demands.](#)

Some people are worried about even sending mail to their loved ones, because it is possible for Coronavirus to be carried on paper. You can reduce the risk by washing your hands thoroughly before writing the letter, not touching your face while writing it, coughing away from the paper and into your elbow if needed, and using tap water or a wet sponge instead of saliva to seal it. You can then drop the letter in a mailbox on Saturday evening, which would give the virus more time to die if the mail is infected. Still, if you are showing symptoms of Coronavirus or just don't want to take the risk, you may be able to stay in touch with phone or video calls, or by emails if your loved one is in a system that permits them through Corrlinks, J-Pay, or another program.

Travel Bans and Closed Borders

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Does the president have the power to keep people from entering the country for public health reasons?

Yes, if they are not U.S. citizens. The president has massive power to prevent people who are not U.S. citizens from entering the country if he finds their entry “would be detrimental to the interests of the United States.” The Supreme Court found that Trump did not abuse that power even in the case of the 2017 Muslim ban. The president cannot ordinarily bar U.S. citizens from entering the country, though. While many U.S. citizens abroad are having trouble returning to the U.S., Trump has not forbidden them from returning.

Right now, Trump claims to be making changes to immigration and customs policy to address the pandemic, but it looks like he is also making changes to move forward his anti-immigrant agenda in unprecedented ways. For example, COVID-19 appears to be much more widespread in the United States than in Mexico, so it is not clear why there should be any focus on preventing people from entering the U.S. from Mexico—and yet Trump has promised to seal the U.S. Mexico border “mostly, and even beyond, but mostly during this global pandemic.” It is also a truly extreme measure to prohibit people seeking asylum from even entering the country to apply for asylum. That is something Trump was trying to do even before COVID-19, but he is having much more success with it now.

What does it mean for borders to be “closed”?

Currently the borders of US/China, US/Canada, US/Mexico, and US/most of Europe are “closed.” According to Trump this means anyone traveling for “non-essential” purposes will be sent back to their country of origin. Essential purposes for travel across the Mexico-U.S. border are currently defined in [this document](#), and include U.S. citizens and permanent residents returning to the U.S., members of the U.S. military, truck drivers transporting cargo across the border, people seeking medical care, and people going to work or school.

However, the broader implications are rooted in Trump's goal of ending migration, in particular migration between Mexico and the U.S. Starting March 23, more than a dozen sweeping immigration restrictions have been enacted, ranging from postponing immigration hearings to certain countries and suspending refugee admissions. Some deportation flights may also be postponed. The enforcement of these orders will likely range based on race, religion, gender, national origin, sexual orientation, and gender identity. While Canadian border crossers will be prevented from entering the U.S., Mexican border crossers will be detained and returned to Mexico. It is unclear if asylum applications are unavailable indefinitely.

ICE Raids and ICE Detention

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Is it legal for ICE to detain people seeking healthcare in hospitals?

Yes, and they have gone into hospitals to arrest people on a number of occasions, or waited outside for them to come out. On March 18 ICE put out a statement claiming they will only target immigrants who pose a public safety risk and who have committed serious crimes for raids and arrests, and they would not carry out enforcement actions at health care facilities during the COVID-19 emergency.

Also, while it may be legal for ICE to go into healthcare facilities to detain people, it is not necessarily legal for hospital staff or local law enforcement to cooperate with them. Hospital staff are bound by rules of confidentiality, and by their oath to cause no harm to their patients. Depending on where you live, there may be local or state law limiting the ways local law enforcement can cooperate with ICE.

Will going to the hospital to get tested or treatment for COVID-19 mean I won't be able to get immigration status under the "public charge" rule?

Some immigrants are rightfully concerned about the "public charge rule," which can interfere with eligibility for a green card based on the likelihood that the applicant will need government benefits. But US CIS (Citizenship and Immigration Services) has announced that seeking COVID-19 related "treatment or preventive services will not negatively affect any alien as part of a future Public Charge analysis." That's true even if Medicaid or another government program pays for the services.

Can ICE pretend to be doctors to get inside someone's home to detain them?

In theory, ICE should get a warrant before forcing entry into anyone's home. But ICE (like other law enforcement agencies) is legally permitted to lie. They are trained to lie, and routinely do lie.

If someone comes to your door claiming to be from the Centers for Disease Control (CDC), they are very likely lying. Ask them to slide their CDC identification under the door; it is very unlikely they will because CDC officials are not currently visiting individuals' homes.

If someone comes to your door claiming to be a doctor and you weren't expecting them, they may be lying too. Ask to see ID. Call whatever agency they claim to be from, using a number you find online rather than a number they give you. If you think they're from ICE, don't let them in, and don't tell them anything.

Is it legal for ICE to move immigrants to places where they are more likely to get sick in the middle of a pandemic?

Maybe. ICE has a lot of power to move detained immigrants wherever it wishes. That said, the government is not supposed to deliberately put people at “substantial risk” of “serious harm,” so there are some limits on what it should be able to do. Right now, there are several lawsuits saying that ICE has to release all detainees who have medical conditions that make them particularly vulnerable to COVID-19. The agency said it will only target immigrants at this time who pose a public safety risk and who have committed serious crimes. They have also stated that they would not carry out enforcement at health care facilities during the COVID-19 emergency. But ICE has still recently moved immigrant children into an area with many more COVID-19 cases. We should maintain public pressure to get ICE to release people, and stop moving detained people into higher-risk areas.

What can I do to help my loved ones in ICE detention?

ICE [suspended family visits March 13](#) due to coronavirus concerns. Lawyers say legal visitors have been asked to fill out a questionnaire as well as have their temperature taken before visiting facilities.

As with prisons and jails, you can support your loved ones by calling, writing letters, paying bond fees if you can, or researching existing [bond funds](#). There are a lot of petitions circulating to free immigrant detainees: sign them, and share them with folks that you know. Here’s an [example](#).

Martial law

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What is martial law?

Martial law can mean a lot of different things. For instance, martial law was declared during the Civil War and in Hawai'i after the Japanese bombed Pearl Harbor, after the Chicago fire of 1871 and the San Francisco earthquake of 1906, and during strikes and periods of uprisings during the civil rights movement. It often means direct military control of normal civilian functions by a government, especially in response to a temporary emergency. It can give the military the power to order evacuations, take supplies it needs, or enter areas it normally wouldn't be allowed to enter. It can also mean giving the military direct power over civilians. Civilians can be arrested, incarcerated, tried, and sentenced by the military. Courts would not have the power to order the military to release civilians. Under martial law, civilians generally have to do whatever the military says.

What are our rights under martial law?

Very limited. The head of the military (in the United States, the "commander-in-chief" is the president) is essentially in charge. In theory, though, military law should still apply. That means, for example, that you should still have representation and a hearing in a military court if you are charged with a crime. But you will not necessarily be entitled to any presumption of innocence, you might be tried for things that would not ordinarily be crimes, and you might be forced to testify against yourself. It is very hard to say what would really happen. But it's likely that we would face harsher penalties for a wider range of things. And the process to figure out if we are guilty would probably be faster and even less fair than current processes.

When is martial law declared?

Legally, martial law can only be declared in very limited circumstances. Typically, to try civilians in military courts, there has to be open warfare, and civilian courts must not be working. During the Civil War, places like Georgia and South Carolina were placed under martial law when the Union Army beat the Confederate Army. Martial law is only supposed to last as long as necessary, and eventually courts said it was wrong to keep trying civilians in military courts after the rebellion was over and civilian courts were operating. Hawai'i was placed under martial law right after Pearl Harbor. But the Supreme Court later said that it was wrong to try civilians in a military court in Hawai'i, because the civilian courts were still functioning after Pearl Harbor, and the territory was not in open rebellion against the United States. In that situation, martial law should only have been used to quickly mobilize military defense of the islands.

Has martial law been declared?

As of April 7, 2020, no, martial law is not in effect in any part of the United States.

Organizing

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Is it legal for the government to shut down protests as a part of shutting down public gatherings?

As of April 7th, the governors of 45 states have either stated publicly or passed Executive Orders declaring that people may not have “non-essential” gathering, gather in large groups, and in some states people must maintain six feet of distance between them. You can look up information on COVID19 specific Executive Orders [here](#) and read summaries [here](#). In these cases, it’s most likely legal for the government to shut down protests deeming them “non-essential”, or shut them down if they exceed the amount of people that they’ve named (more than ten in some states), or if people are not maintaining six feet of distance between them.

But it is definitely not legal to shut down a protest while allowing other gatherings, or to shut down one protest while letting another one on a different topic happen. It is definitely not legal to beat up protesters. And it is definitely not legal to keep suppressing protest even one minute past when public health officials say it is necessary.

In counties and states where there aren’t laws limiting or banning gatherings , there are still a variety of ways in which people may be criminalized for protesting, especially in this time of fear and rapidly changing law. Police could use existing laws against endangering people’s health, creating a “nuisance,” “loitering,” “unlawful public gatherings,” “obstruction of government administration,” etc. That said, some of these risks are always present during protests, and sometimes in-person protests are worth it. Try to read the text of actual executive orders or public health orders to gauge what tactics might be least risky, and stay in touch with other organizers to find out what current conditions are. Can you have a picket where everyone stands at least six feet apart? Can you do a car protest where there is just one person per car? Can you have a vigil broken into several small groups, none of them larger than ten people? And remember that there are many ways to do direct action online or through one-on-one interactions. For a very long time, disabled and chronically ill people have been pointing out the importance of having multiple ways to participate in organizing.

With so much more organizing going digital, what should we do to protect our information from law enforcement?

It’s worth thinking about what sort of information needs to be protected from the government. For example, lots of mutual aid projects can be shared on facebook. But when the projects

involve illegal actions, like trading prescription medications, talking about them publicly could put you and others in the project at risk. Private, encrypted communication methods (like Signal) and in-person hyper-local organizing can be used for planning direct actions you think might attract unwanted government attention. Many resources are out there for how to improve digital security.

What should we be demanding from the government right now?

- Any emergency powers must be used only to support public health, and must be given up as soon as the crisis has passed. These powers may be best used to get needed supplies to healthcare facilities; make sure everyone has paid sick and family leave and medical care; provide safe, permanent, non-restrictive housing to houseless people; and make sure no working class or poor person loses any income from the crisis.
- Emergency powers must NOT be used to carry out a racist, anti-immigrant agenda. Asylum must not be restricted, and movement of people across borders must be permitted.
- Free Them All! Everyone in any form of detention should be released right now. This intervention alone could save thousands, even millions of lives.
- No new arrests. Freeing people from detention won't help if we keep locking up more people.
- Suspend all bench warrants. There are few, if any, municipal courts open. Anyone arrested on a bench warrant will likely sit in jail indefinitely waiting for a new court date. Keeping people out of jail is a public health requirement.
- If any facility ends visitation, it must expand capacity for phone and video calls and emails. Calls and emails should be free, and people should be allowed to make them at any time. Many families are experiencing financial difficulties because of loss of work and income—they should not also have to give up contact with their loved ones inside, who are also at higher risk of infection because they live in close quarters with many other people.
- Anyone in any institutional setting must be provided with plenty of free hygiene and sanitation supplies and excellent health care. Incarcerated workers should receive at least minimum wage. Support and protective gear should be provided for workers doing cleaning and maintenance, delivery, health care, operations etc. Sanitation protocols should be open to the public upon request.
- Foreign policy that hurts public health for people outside of the U.S. should also be addressed, including an immediate end to sanctions on Iran and to blockades in Gaza, so people in Iran and Palestine can access healthcare.
- Transparency. All policies relating to COVID-19, including those affecting incarcerated people, must be shared publicly. Information government officials share with the public should be accurate, clear, and complete. Oversight and checks and balances of funds created to insure no fraud or discrimination and protect against kickbacks.

- Non-discriminatory access to healthcare. So far, both in the U.S. and in other countries, health care systems have chosen to let disabled people die so they could prioritize COVID-19 treatment for abled people. That is genocide. Healthcare must never be rationed in a way that prioritizes treatment for the most privileged.

What shouldn't we be demanding from the government right now?

- *Quarantine orders.* While COVID-19 is very serious, quarantine is a dangerous intervention that has often been abused. For example, it has been used in U.S. history to quarantine Chinese people because of ungrounded fears about plague, and to quarantine working-class women with sexually transmitted infections who were seen as promiscuous or sex workers. Also, a very large number of people have or have been exposed to COVID-19, often without even knowing it—quarantining everyone isn't practical, and it's likely that people from marginalized groups will be targeted for the most severe forms of control. A better approach is doing absolutely everything we can to make sure that everyone gets healthcare who needs it, that everyone has the resources to take time off work and stay home, that everyone *has* a safe and stable home, that no one is incarcerated, and that everyone knows the latest recommendations on limiting transmission (physical distance, hand washing, etc.).
- *Overly restrictive shelter in place, "stay at home," or curfew policies (or permits, passes, or identity checks to go outside or leave or enter an area).* Shelter in place policies must be no more restrictive than necessary, must not extend any longer than necessary, and must not be enforced through criminalization. Exceptions to shelter in place also should never depend on having a pass, permit, or ID. Immigrants, youth, trans people, houseless people, and survivors of intimate partner violence are some of the people least likely to be able to get permits or passes, or to show ID. But they have at least as much need to go to the doctor, get food, and care for others as anyone else.
- *Temperature checks to access public spaces.* Any sort of medical tests or illness or disability-related regulation of access to public space set an extremely dangerous precedent. A century ago, many cities had laws prohibiting people with disabilities from going out in public. Many public health screenings were put in place as a part of eugenic programs to wipe out anyone seen as "undesirable." We should not be trying to bring back or worsen these sorts of policies.
- *Curfew.* Curfews have historically been used to stifle political dissent and target communities of color. They also would not help—they would just cause more crowding in hours outside the curfew.

- *Stamps (physical or virtual) or other markers on people who have COVID-19 or have been exposed to COVID-19.* These measures are stigmatizing and tend to be used to target people for quarantine, violence, criminalization, and other extreme measures.
- *Enforcement of public health recommendations through police or military action.* While limiting our physical contact with others may make a ton of sense right now, expanding surveillance, policing, criminalization, incarceration, or militarization would be a terrible mistake, especially for communities of color, people with disabilities, people living with HIV, trans people, low-income people, drug users, sex workers and other people working in informal and criminalized economies, survivors of violence, and immigrants. We can't trust the police or military to take care of us: we need to take care of each other.
- *Martial law, indefinite detention, or suspension of habeas corpus (a person cannot be detained indefinitely without access to a trial).* These interventions would not address COVID-19 in any way, except maybe to make it worse. They would drastically increase executive and military power, and strip us of crucial rights.

What should we watch out for down the line?

- *Martial law and suspension of civil liberties.* If we see the government moving toward this, we need to organize immediately to stop it.
- *Cancellation of elections.* Cancelling elections would permit leaders to remain in control past the time when the people should have had some say in it. Removing this means of government accountability would be unacceptable. A better response would be making sure that everyone can vote by mail or vote online. At the very least, early voting should be widely available to relieve crowds in polling places, and poll workers should have protective gear.
- *Food, healthcare, and other supply rationing.* Preventing hoarding and price gouging can be important, but we need to be vigilant against unnecessary restrictions. We also need to be vigilant against discriminatory delivery of health care, and resist the ways some lives will be seen as more worthy of saving than others. Already in COVID-19, as in the past, some have decided that disabled people, elderly people, and other marginalized populations are disposable and should be left to die to save resources for abled people, younger people, and other privileged groups. Our primary way of rationing healthcare in the United States is typically based on wealth and class, combined with racism, settler colonialism, xenophobia, ableism, ageism, and sexism. We need to make sure that *everyone* has access to what they need to survive.
- *Mass arrests, or people just being disappeared.* In times of emergency, it is easier for power-hungry people to take advantage of the situation to make those they perceive as undesirable disappear. People are less likely to question or even notice it. That's because we may be scared enough to accept extreme measures, we know many people are hospitalized or have died, and our social networks have changed drastically. We need to do all we can to look out for each other.

- *Normalization of emergency powers.* While not all risks to public health are equal, there are always risks to public health. We must reject a permanent state of emergency. We must keep viewing the extraordinary measures currently being taken as temporary, and insist they end as soon as possible.

Mutual Aid

Last updated April 7, 2020

Can I get arrested for providing mutual aid for others?

In short, probably. Each state has exemptions to their stay at home/ shelter in place/ state of emergency orders for “essential services.” Most include caring for one’s self and loved ones in this category. Some states specify caring for oneself and “family members.” New York State issued its definition of essential services [today](#) to include food banks and “human service providers” who are providing state run or funded volunteer services. Additionally businesses and organizations can petition to be an essential service in NY [here](#).

Activists in Durham N.C. successfully petitioned their mayor to include mutual aid in the list of essential, exempt volunteer activities:

<https://durhamnc.gov/DocumentCenter/View/30132/DCO-Second-Amendment-SAH-4-3-20m> (see, c (6)) and, here is a sample petition to get this enforced in your town <https://sign.moveon.org/petitions/expand-stay-at-home-orders-to-inc>.

It is, of course, unclear, how any of this will be enforced. Like all criminalization, violations of these orders (Even while providing care for others) will be disproportionately enforced based on race, class, immigration status, ability, sexuality, gender identity, immigration status, etc. There is also a question of how one will prove they are providing mutual aid.

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